



**MINUTES OF THE GILA COUNTY**

**BOARD OF ADJUSTMENT**

**Thursday, November 17, 2016**

GILA COUNTY BOARD OF SUPERVISORS CONFERENCE ROOM

610 E Highway 260, Payson, AZ

9:00 am

**REGULAR MEETING**

1. The meeting was called to order at 9:01 am by Mickie Nye.
2. Mickie Nye led the Pledge of Allegiance.
3. Roll Call: Therese Berumen did the roll call; Mickie Nye, Mary Lou Myers, and Kurtis Knauss were all present. A quorum is present.

Community Development Staff Members Present: Robert Gould-Planner, Scott Buzan-Building Official, Margie Chapman Code Compliance Supervisor/Zoning Assistant and Therese Berumen-Administrative Assistant.

4. Review and Approval of the Board of Adjustment Minutes of October 20, 2016. Mickie Nye asked if there were any changes needed to the minutes. No changes were suggested. Mary Lou Myers motioned that the minutes be approved as is and Kurtis Knauss seconded the motion. The motion was unanimously approved.
5. **Planner/Commission Communication:** At any time during this meeting of the Board of Adjustment, Planner Bob Gould of Community Development may present a brief summary of current events. Mr. Gould brought up that for the December meeting, we will have a Conditional Use Permit for a property on Hwy. 188. In the past, we have had a couple of rezoning and comprehensive plan amendments for properties on Hwy. 188 and fossil creek road because of the commercial zoning and wanting to change it to residential. This case is the exact same thing, but I have decided to have the property owner apply for the Conditional Use Permit instead because they already have their financing in place. It is also easier for them to do, quicker and meets the intent of the code.

**HEARINGS**

Public Hearing

**Appeal to approval of Use Permit**

6. **U16-09 Application by Joel Bishop for Margaret Skinner:** Application for a Use Permit on Gila County Tax Assessor Parcel 302-29-003L, located at 265 W. Liberty Lane, Payson, AZ. The appellant is appealing the approval of U16-09 to allow a 5<sup>th</sup> wheel trailer to be used as a temporary housing unit.

Mickie Nye asked if any board members had any questions. Mary Lou asked if in this particular area, Freedom Acres, if manufactured homes were not allowed and asked if they are allowed to have travel trailers on the property. Mr. Gould stated that yes in the SR zoning; they are allowed

to have manufactured homes. He also stated that normally travel trailers are only allowed as temporary housing units, but not as permanent ones. My decision for this approval was based on Joel's mother needing his care and him being close by for that and also for him to keep the property maintained for her. The only thing unusual about my decision is that the normal length of time is 6 months and I have it for 1 year. My decision included before that year, that he removes the RV and gets a permanent housing unit, which meets the HUD or building code specifications. Mary Lou Myers also asking Mr. Gould, from his staff report that he states that Paul Ruetters at 240 W. Liberty Lane was concerned that Joel having and living in his RV on the property is impairing his ability to sell his home, if the manufactured homes that sit across the street and down the way, impact his ability to sell his home. Mr. Gould stated that he had no idea. Mickie Nye stating that the purpose of approving there request is truly legal. We are allowed to make exceptions to the rules based on other issues that come into play, such as care for an elderly grandmother or sister. This was never meant to be long term. Only short term. Mr. Gould stating that yes, that was the whole intent and Mr. Bishop fully understood that. Mickie Nye stating that it is recognized that the fact is her son needs to take care of them and Mr. Gould agreeing. Mr. Gould stating that it is hard to find out what the issues are in this case. I settled on the issue being that the mother needed some help and needed some assistance with her daily living skills. Therefore, with 3 acres of land, maintained extremely well for her, by Mr. Bishop, I didn't want to kick him off the land all the sudden. It would have been so much easier for me to do, but I didn't want to do that. I felt going through the use permit process and providing with an exception to the code was most appropriate.

The meeting was opened to public comment. Paul Ruetters introduced himself and stated that he was the one that initially filed the complaint, that Joel Bishop was living in his RV on the property. Stating that in the zoning ordinance there is no definition for temporary, but there is for permanent. The zoning ordinance states permanent as 180 days. He also stated that Mr. Bishop residing in his RV for more than 180 days is not acceptable. Joel Bishop has been in violation to your code for 4 years now. It is something that I have looked the other way at and given him the benefit of the doubt for 4 years now. Mr. Ruetters stating that it is not a 5<sup>th</sup> wheel trailer, that it is a 5<sup>th</sup> wheel toy hauler and wasn't designed for permanent, continuous living. Referencing Mr. Gould's staff report about fairness and asking who is fair here and if the board was being tilted towards the Bishop's or towards him. Stating that fair is in the eyes of the beholder at this point. Referencing Mr. Gould's staff report about giving Mr. Bishop adequate time to correct this situation; wanted to know how much time does it take for Joel Bishop to figure it out. He has been there for 4 years now. Mr. Ruetters asking what the definition of an accessory residential unit is. Stating that he didn't see it defined. Mr. Gould stated that there may not be a definition of it, but there is a whole section in our zoning codes. Mr. Ruetters stating that Mr. Bishop is also in violation of the setbacks and doesn't understand why when an inspection was done, a notice of violation wasn't issued. Also stating that he thinks a seed was planted into Mr. Bishop's mind, by one of our representatives that there was a way around the code if he just applies for the use permit. Mr. Ruetters referencing the minutes from the administrative hearing, concerning the wastewater situation and him living in an RV as a dangerous situation, with there only being one door. Questioning what would happen if there was a fire. Mr. Ruetters referencing Mr. Gould's approval letter stating that he doesn't think that Mr. Bishop is the best response for his mother's care, when she falls. Stating he doesn't know if Mr. Bishop has EMT or first responder's training. Stating that for someone her age, you would want someone who is trained to check her out. Stating that in Freedom Acres, they have a landowner's association with Covenants, Conditions, and Restrictions, that guard against people

living in 5<sup>th</sup> wheel trailers. Mr. Ruettgers read from the Gila County Zoning Ordinance, sections 101.1, 101.2, 104 and 103.1; also giving definitions of a use permit, accessory dwelling unit, RV, and nuisance. Bottom line is, this is an illegal encampment. Joel Bishop is basically a squatter and a nuisance; he needs to move out. There are better ways to provide assistance to his family, than him living there. If you look at the SR districts, there are no other permitted uses listed. In the GR section, it states permitted uses and other permitted uses, subject to a use permit, but for SR, it only has permitted uses and nothing after that. There is also nothing about elder care listed in the section. Mr. Ruettgers goes on to talk about how he is trying to sell his property and it has been brought to his attention by prospected buyers that have asked him, "What kind of neighborhood or subdivision do you live in that allows people to live in 5<sup>th</sup> wheel toy haulers?" Stating that it affects him selling his property in a negative way and how he is upset about this situation because he has invested a lot of money in his property. This is an SR zoning district, not an RV park. I have contacted the manufacturer of the RV and it is not even all season rated. Mickie Nye asked if anyone else had any further questions. Mr. Gould stating that in regards to the setbacks, Mr. Bishop has fully agreed to move his trailer to be in full compliance. The setbacks will be addressed and according to the code. Regarding the wastewater issue, we never have wastewater reviewed first in the process. Once we complete the use permit, that allows the uses, then we have them go through the building permit process and the wastewater process. Yes, he has been there 4 years, but we don't go out and seek these. We only go out when a compliant has been filed. Also stating that most 5<sup>th</sup> wheel trailers only have one door. Mickie Nye stating that toy haulers have an open back entrance. I made this very clear that this wasn't a permanent housing unit, it was only meant to be temporary. I have no problem changing the time frame to 6 months. Joel Bishop stating that his RV has one door and the whole back end is open and the unit also has 4 windows with escape hatches. Stating the size of his RV is actually 36 feet long and 8 ½ feet wide. Also, I removed the other mobile home that was on the property. Michael Greer stating that the right thing to do is to let Mr. Bishop reside there, so he can take care of his mother and sister. Also stating that Mr. Ruettgers reason for not selling his property because of Mr. Bishop's RV is ridiculous. The current market for property there is \$350,000 and Mr. Ruettgers is selling his property for \$518,000. That is why he can't sell it. It has been like that for years and he has gone through realtor after realtor. On the petition that we had going around Freedom Acres, 4 out of the 5 Homeowner's Association members signed it. Lori Webster stating that the Skinners, like a lot of others in that area, are grandfathered in with the setbacks of the property because they are the original homesteaders. We have also had 3 other homes sold, with no problem at all. They sold for a lot less than what Mr. Ruettgers is selling his property for, but they sold. I think that is what the issue really is. Scott Buzan stating that the county does not enforce Covenants, Conditions, and Restrictions, but wanted to make sure this was out there. Going through this process and if the Homeowner's Association won't allow it, could cause problems. No further comments. The public comment portion of the meeting was closed.

Mickie Nye asked if any of the board members had any questions. Mr. Gould stating again, that in retrospect, maybe the one year time period was a long time for the unit to stay there. I wouldn't argue if the board wanted to reduce it to 6 months. That is fully in compliance with our code. We can issue a temporary use permit for that. In defense to Mr. Ruettgers, his intent was to not have anything that was going to deter from his property value. I am not convinced that this is harming his property value. Mr. Bishop keeps the property kept up and in a neat and orderly fashion. Doing it for a shorter time period, may be a good compromise. Mickie Nye asked Mr. Gould if it is legal for them to approve his actions and that it would not be in violation of anything whatsoever. Mr. Gould stating, yes it is and not that he was aware of. Mickie Nye going on to say that as a



man who helped take care of his grandmother, when she was older, I cherished the time I got to spend with her before she passed. In my opinion, calling 911 and no matter the length of time it took was 5 minutes too long. I don't have a problem with a year. A year, personally, is far less than the 4 years that it has already been there. As it was previously said, we don't go out looking for things wrong with properties, we react after we are notified and it is brought to our attention. I believe that many functions of the county work towards how we can help resolve the issues and make everybody happy. We have always done this. Mary Lou Myers asked if Mr. Bishop was willing to abide by the setback issues. Mr. Gould stated that yes he was. Kurtis Knauss asked Mr. Gould if there were any laws and provisions for homesteads, separate from the planning and zoning commission. Mr. Gould stated not really. The only laws and provisions are, if something was established prior to us. This is about us enforcing the code, not making the code. They are legally grandfathered in and we don't do or say anything about that. The code was adopted in 1959 and we didn't have a code enforcer in the Payson area until the 1980's, so anything before that time, we consider grandfathered in. Mickie Nye reinstating the fact that we had a petition with 31 resident's signatures from Freedom Acres supporting the decision that was already made. Mr. Nye asked if there were any further comments. Mr. Ruettgers spoke up and Mr. Nye said the public portion was closed. Mary Lou Myers motioned to deny the appeal for U16-09 with the stipulations recorded to deed. The motion was seconded by Kurtis Knauss. The motion was approved unanimously. Mr. Nye stating that we need to fully address the issue of accessory units because it has been brought up several times.

#### **Variance Application**

7. **V16-05 Application by Michael and Marybeth Nipp:** Application for a Variance on Gila County Tax Assessor Parcel 301-62-073A, located at 4577 N. Portal Dr., Pine, AZ. The applicant is requesting to allow construction of a single-car carport, with a front setback of 5'9".

Planner Bob Gould presented the Staff Report Overview. The Board of Adjustment may allow a Variance from the terms of the Ordinance when, owing to particular conditions, a strict interpretation would work an unnecessary hardship, if in granting the variance the general intent on the purposes of the zoning ordinance will be preserved. Mr. Gould stated that if you looked at the photos in the staff report, you will see that he has a piece of property that has a lot of topography to it. The property owner actually took the photos for me, of the bottom part because I was worried about sliding down the hill. The area is already paved and already set for a carport. Even though it is 5'9" from the property line, he will have a lot of buffering between him and the highway. Also has a lot of vegetation that helps with the visibility from the roadway. In regards to what the variance process is meant for, he does not have another location on the lot. I recommend that you approve this variance. Mickie Nye asked if any members had any questions. Mary Lou Myers asked Mr. Nipp if he had approval from the HOA and if the carport was going to be attached to the building. Mr. Nipp stated yes on both accounts.

The meeting was opened to public comment. No comments from the public. Public portion was closed. Mr. Nipp stated, "I don't have to say anything?" Mr. Nye stated, no you don't. Mary Lou Myers motioned to approve V16-05. The motion was seconded by Kurtis Knauss. The motion was approved unanimously.

8. **Adjournment.** Mary Lou Myers made a motion to adjourn the meeting and Kurtis Knauss seconded the motion. The motion to adjourn was unanimously approved at 9:59 AM.